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BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **SHARON A. HUNTER** **P.O. Box 2447** **Mendocino, CA 95460** **Registered Nurse License No. 246265** **Public Health Nurse Certificate No. 47371** **Nurse Practitioner Certificate No. 6595** **Nurse Practitioner Furnishing Certificate No. 6595** Respondent.	Case No. 2019-964 **ACCUSATION**

Complainant alleges:

PARTIES

1. Joseph L. Morris, PhD, MSN, RN (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Board of Registered Nursing (Board), Department of Consumer Affairs.

2. On or about August 31, 1974, the Board issued Registered Nurse License Number 246265 to Sharon A. Hunter (Respondent). The Registered Nurse License was in full force and

effect at all times relevant to the charges brought herein and will expire on April 30, 2020, unless renewed.

3. On or about April 5, 1991, the Board issued Public Health Nurse Certificate Number 47371 to Respondent. The Public Health Nurse Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2020, unless renewed.

4. On or about July 15, 1993, the Board issued Nurse Practitioner Certificate Number 6595 to Respondent. The Nurse Practitioner Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2020, unless renewed.

5. On or about September 9, 1994, the Board issued Nurse Practitioner Furnishing Certificate Number 6595 to Respondent. The Nurse Practitioner Furnishing Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2020, unless renewed.

JURISDICTION

6. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

7. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

8. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY & REGULATORY PROVISIONS

9. Section 2761 of the Code provides, in pertinent part, that the Board may take disciplinary action against a certified or licensed nurse for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

10. Section 2836.1 of the Code provides, in pertinent part,

Neither this chapter nor any other provision of law shall be construed to prohibit a nurse practitioner from furnishing or ordering drugs or devices when all of the following apply:

(a) The drugs or devices are furnished or ordered by a nurse practitioner in accordance with standardized procedures or protocols developed by the nurse practitioner and the supervising physician and surgeon when the drugs or devices furnished or ordered are consistent with the practitioner's educational preparation or for which clinical competency has been established and maintained.

(b) The nurse practitioner is functioning pursuant to standardized procedure, as defined by Section 2725, or protocol. The standardized procedure or protocol shall be developed and approved by the supervising physician and surgeon, the nurse practitioner, and the facility administrator or the designee.

(c)

(1) The standardized procedure or protocol covering the furnishing of drugs or devices shall specify which nurse practitioners may furnish or order drugs or devices, which drugs or devices may be furnished or ordered, under what circumstances, the extent of physician and surgeon supervision, the method of periodic review of the nurse practitioner's competence, including peer review, and review of the provisions of the standardized procedure.

(2) In addition to the requirements in paragraph (1), for Schedule II controlled substance protocols, the provision for furnishing Schedule II controlled substances shall address the diagnosis of the illness, injury, or condition for which the Schedule II controlled substance is to be furnished.

(d) The furnishing or ordering of drugs or devices by a nurse practitioner occurs under physician and surgeon supervision. Physician and surgeon supervision shall not be construed to require the physical presence of the physician, but does include (1) collaboration on the development of the standardized procedure, (2) approval of the standardized procedure, and (3) availability by telephonic contact at the time of patient examination by the nurse practitioner.

(e) For purposes of this section, no physician and surgeon shall supervise more than four nurse practitioners at one time.

(f)

(1) Drugs or devices furnished or ordered by a nurse practitioner may include Schedule II through Schedule V controlled substances under the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) and shall be further limited to those drugs agreed upon by the nurse practitioner and physician and surgeon and specified in the standardized procedure.

(2) When Schedule II or III controlled substances, as defined in Sections 11055 and 11056, respectively, of the Health and Safety Code, are furnished or ordered by a nurse practitioner, the controlled substances shall be furnished or ordered in accordance with a patient-specific protocol approved by the treating or supervising physician. A copy of the section of the nurse practitioner's standardized procedure

relating to controlled substances shall be provided, upon request, to any licensed pharmacist who dispenses drugs or devices, when there is uncertainty about the nurse practitioner furnishing the order.

. . .

11. Section 2836.3, subdivision (c), of the Code provides, in pertinent part,

(c) The board may revoke, suspend, or deny issuance of the numbers for incompetence or gross negligence in the performance of functions specified in Sections 2836.1 and 2836.2.

12. California Code of Regulations, title 16, section 1442, states:

As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life.

13. California Code of Regulations, title 16, section 1443, states:

As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5.

14. California Code of Regulations, title 16, section 1443.5 states, in pertinent part:

A registered nurse shall be considered to be competent when he/she consistently demonstrates the ability to transfer scientific knowledge from social, biological and physical sciences in applying the nursing process, as follows:

(1) Formulates a nursing diagnosis through observation of the client's physical condition and behavior, and through interpretation of information obtained from the client and others, including the health team.

(2) Formulates a care plan, in collaboration with the client, which ensures that direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and for disease prevention and restorative measures.

. . .

(5) Evaluates the effectiveness of the care plan through observation of the client's physical condition and behavior, signs and symptoms of illness, and reactions to treatment and through communication with the client and health team members, and modifies the plan as needed.

(6) Acts as the client's advocate, as circumstances require, by initiating action to improve health care or to change decisions or activities which are against the interests or wishes of the client, and by giving the client the opportunity to make informed decisions about health care before it is provided.

DRUGS

15. Section 4022 of the Code provides, in pertinent part, that a:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a ," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

16. Alprazolam is a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(1), and is a dangerous drug pursuant to Business & Professions Code section 4022.

17. Endocet is a Schedule II controlled substance as designated by Health and Safety Code section 11055(b)(1)(M), and is a dangerous drug pursuant to Business & Professions Code section 4022.

18. Fentanyl is a Schedule II controlled substance as designated by Health and Safety Code section 11055(c)(8), and is a dangerous drug pursuant to Business & Professions Code section 4022.

19. Hydrocodone is a Schedule II controlled substance as designated by Health and Safety Code section 11055(b)(1)(I), and is a dangerous drug pursuant to Business & Professions Code section 4022.

20. Lorazepam is a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(16), and is a dangerous drug pursuant to Business & Professions Code section 4022.

21. Morphine is a Schedule II controlled substance as designated by Health and Safety Code section 11055(b)(1)(L), and is a dangerous drug pursuant to Business & Professions Code section 4022.

COST RECOVERY

22. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

FACTUAL BACKGROUND

23. At all times referenced herein, Respondent was employed as a Nurse Practitioner at North Coast Family Health Center (NCFHC) in Fort Bragg, California.

24. On or about April 5, 2017, the Board received a complaint from the Medical Board of California concerning Respondent, stating that a patient, NH, had died from acute fentanyl toxicity, and that it appeared that Respondent had overprescribed lorazepam.

25. The Board conducted an investigation of the complaint. The Board learned that from on or about March 15, 2010, through January 17, 2013, Respondent was the primary care provider of NH, who died on January 17, 2013. NH was a 70-year old woman with a history of chronic low back and dental pain, narcotic dependent, benzodiazepine abuse, alcohol abuse, depression, anxiety, spousal abusive situation, hypertension, and hypothyroidism. NH was seen by Respondent primarily on a monthly basis for refill of opioid and benzodiazepine medications pursuant to an Opioid Contract dated March 15, 2010. NH was admitted to a hospital on or aobut July 31, 2012, for altered mental status secondary to a combination of opioid abuse and alcoholism. Respondent's supervising MD then changed NH's prescriptions from Morphine, Xanax, and Endocet to Fentanyl 25mcg every three days, and Lorazepam 1mg. The supervising MD saw NH on August 8, 2012, and the Fentanyl dose was increased to 50mcg along with a Lorazepam refill. On or about August 14, 2012, NH signed a new Opioid contract with another Nurse Practitioner.

26. Respondent saw NH on August 21, 29, September 12, November 14, and December 13, 2012. On the August 29 visit, NH's Fentanyl dose was increased to 75mcg by Respondent.

A urine toxicology screen was also ordered on the August 29 visit, which revealed that NH's Fentanyl level was 7.9ng/ml, with the lab reference normal of 0.3ng/ml. Therefore NH's lab result indicated over 7 times greater than therapeutic level of Fentanyl in NH's blood. Respondent did not make any notation that she reviewed these lab results with NH at the subsequent office visits. Instead, at the September 12 visit, Respondent refilled the increased dosage of Fentanyl for NH, and changed the follow-up period from 2 weeks to 6 weeks.

27. Respondent prescribed the following dangerous drugs to NH:

DATES	**DRUG**	**DOSES**	**# PRESCRIPTIONS**
10/7/10-10/7/11	Morphine Sulfate	15mg, 30mg and 60mg	10
10/7/10-10/7/11	Fentanyl	75mcg and 100mcg	4
3/2/12-7/24/12	Alprazolam	.5mg	10 (only prescriber of this medication)
1/21/12-8/3/12	Morphine Sulfate	30mg	9
1/21/12-8/3/12	Endocet	10/325	6
8/21/12-12/13/12 (last RX)	Fentanyl	25mcg (1) 50mcg (1) 75mcg	6
8/21/12-1/10/13 (last RX)	Lorazepam	1mg	9

All of these drugs are listed in the NCFHC clinic formulary of Scheduled Drugs approved to be prescribed by medical providers.

28. The American Pain Society (APS)-American Academy of Pain Medicine (AAPM) published an Opioid Guideline Panel in 2009, establishing a standard of care and guidelines for chronic opioid therapy management in patients experiencing non-cancer related chronic pain. A specific Standardized Procedure for chronic opioid therapy could not be located in the NCFHC Standardized Procedures Manual.

29. NH's medical records establish a well-documented history of alcohol abuse by NH, documented by Respondent and other medical providers. Respondent continued to prescribe opioid and controlled substances to NH throughout the three years Respondent treated NH. Even after NH was admitted to the hospital for an overdose on or about July 31, 2012, Respondent continued to prescribe opioid and controlled substances without consultation from a physician, referral to a pain-management specialist, or substance abuse treatment facility for alcohol and prescription drug abuse. In fact, Respondent actually increased NH's Fentanyl dosage, without supervising physician consultation, following NH's July 2012 hospitalization. Respondent denied identifying drug-seeking behavior by NH, and that NH was "not high on [Respondent's] alert list." Respondent did not make an assessment of NH's pain in any of NH's medical notes, including identifying NH's pain to include severity, description, location, level of functioning and ability to perform activities of daily living. None of the recommended opioid therapy monitoring tools were completed. A limited physical examination was conducted at each visit, without a detailed spine and neurological assessment to the specific area of pain. No follow-up discussion was recorded by Respondent regarding the blood-screen result showing NH's Fentanyl level to be over seven times the acceptable limit. Respondent inappropriately monitored NH's opioid therapy, and prescribed additional opioids to NH at the September 12, 2012, visit.

30. Respondent provided NH a refill of Lorazepam over the phone on or about January 10, 2013, a week before NH's death. Respondent had noted in NH's record previously that NH was noted to request refills on Lorazepam prior to the 30-day due date.

31. Respondent made a recommendation for physical therapy for NH on or about August 29, 2012, but Respondent did not follow up with any referral, or provide any documentation on subsequent visits regarding a follow-up with NH regarding this referral. Moreover, Respondent failed to make any referrals for psychiatric and/or social services, despite numerous notations in the medical records regarding a spousal abusive relationship, chronic depression, and alcoholism.

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FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Gross Negligence)

32. Respondent's license is subject to discipline under section 2761(a)(1) of the Code, in that she was grossly negligent as defined by California Code of Regulations, title 16, section 1442. As stated above in paragraphs 23-31, and incorporated herein, Respondent failed to adequately monitor NH's opioid pain management plan and/or consult with a supervising physician. Respondent's conduct exhibits a severe and reckless disregard for the life or safety of NH, and Respondent failed to provide an adequate level of care or caution by continuing to prescribe opioid medications without adequate consultation and/or follow up. Even after an overdose incident in July 2012, Respondent increased NH's dosage of Fentanyl without consultation from the supervising physician. Respondent repeatedly failed to provide nursing care as required, and her actions demonstrated an extreme departure from the standard of care that she knew or should have known could have jeopardized the life or health of NH.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Incompetence)

33. Respondent is subject to disciplinary action under section 2761(a)(1) of the Code, and/or California Code of Regulations, title 16, sections 1443 and 1443.5, for unprofessional conduct amounting to incompetence. As stated above in paragraphs 23-31, Respondent failed to exercise the degree of learning, skill, care, and experience ordinarily possessed and ordinarily exercised by a competent registered nurse, as defined in California Code of Regulations, title 16, section 1443.5.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

34. Respondent is subject to disciplinary action under section 2761, subdivision (a) in that her conduct was unprofessional, as described in paragraphs 23-31, in that she failed to adhere to established standards of practice for nursing in her care of patient NH. Respondent failed to follow the specific procedures that outlined situations which required consultation of a supervising physician and documentation of such consultations, as well as initiating referrals for

NH for specialty care. Respondent provided years of Opioid Therapy to a complex, chronic pain patient, when NCFHC did not have an established Standardized Procedure for Nurse Practitioners to provide Opioid Therapy.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 246265, issued to Sharon A. Hunter;

2. Revoking or suspending Public Health Nurse Certificate Number 47371, issued to Sharon A. Hunter;

3. Revoking or suspending Nurse Practitioner Certificate Number 6595, issued to Sharon A. Hunter;

4. Revoking or suspending Nurse Practitioner Furnishing Certificate Number 6595, issued to Sharon A. Hunter;

5. Ordering Sharon A. Hunter to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

6. Taking such other and further action as deemed necessary and proper.

DATED: June 18, 2019

for JOSEPH L. MORRIS, PHD, MSN, RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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